

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

|                                  |   |                     |
|----------------------------------|---|---------------------|
| <b>DON A. LEE</b>                | ) |                     |
| Claimant                         | ) |                     |
|                                  | ) |                     |
| VS.                              | ) |                     |
|                                  | ) |                     |
| <b>LARNED STATE HOSPITAL</b>     | ) |                     |
| Respondent                       | ) | Docket Nos. 241,965 |
|                                  | ) | 242,026             |
| AND                              | ) |                     |
|                                  | ) |                     |
| <b>STATE SELF-INSURANCE FUND</b> | ) |                     |
| Insurance Carrier                | ) |                     |

**ORDER**

Respondent requests review of the February 25, 2003, Post-Award Medical Award entered by Administrative Law Judge Bruce E. Moore. This is a post-award proceeding for medical benefits. Both parties submitted briefs and the case was placed on the summary docket on April 4, 2003, for a decision without oral argument. Gary M. Peterson was appointed as Board member pro tem for the purpose of determining this matter.

**APPEARANCES**

Claimant appeared by his attorney, Joseph Seiwert of Wichita, Kansas. Respondent appeared by its attorney, Richard L. Friedeman of Great Bend, Kansas.

**RECORD**

The Board has considered the record listed in the Post-Award Medical Award.

**ISSUES**

This matter came before Judge Moore on claimant's August 27, 2002, Application for Post Award Medical requesting "additional medical treatment, authorization of surgery, transfer of treatment to a physician in the Casa Grande, AZ area."<sup>1</sup>

---

<sup>1</sup> The form K-WC E-4 Application for Post Award Medical was signed and dated August 26, 2002, and stamped received by the Kansas Division of Workers Compensation on August 27, 2002.

Judge Moore's February 25, 2003, Post-Award Medical Award, authorized Dr. Douglas A. Slaughter as the treating physician to "proceed with MMPI testing to determine whether Claimant is an appropriate surgical candidate." The Judge concluded that if Dr. Slaughter elected to proceed with surgery it would be authorized.

Respondent requested review stating, "The specific issues respondent and insurance carrier wish to address are:

1. Whether or not the Claimant is in need of additional surgery.
2. Authorization of a doctor to perform the surgery.
3. All other issues which may properly be presented."<sup>2</sup>

Respondent argues that Dr. Slaughter was not provided all of claimant's medical records and consequently did not have sufficient information to conclude claimant requires additional surgery. Implicit in the argument is that the claimant may have unrealistic expectations of the benefits of the proposed surgery.

Conversely, claimant argues the only admissible medical evidence was provided by Dr. Slaughter and it establishes claimant needs additional surgery as a result of his original injury.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the record filed herein, the Board finds the ALJ's Post-Award Medical Award should be affirmed.

The Board finds the ALJ's findings and conclusions are accurate and supported by the law and the facts contained in the record. It is not necessary to repeat those findings and conclusions in this Order. The Board approves those findings and conclusions and adopts them as its own.

In a post award medical proceeding, an award for additional medical treatment can be made if the trier of fact finds that the need for medical care is necessary to relieve and cure the effects of the original accidental injury which was the subject of the underlying award.<sup>3</sup>

---

<sup>2</sup> Application for Review of Post-Award Medical Award of February 25, 2003 (filed March 6, 2003).

<sup>3</sup> See K.S.A. 44-510k(a).

It is undisputed that after claimant's original work-related injury he was provided medical care that included a laminectomy and surgical fusion at L4-5 and L5-S1. Claimant testified his condition never improved following surgery. Claimant continues to have back and leg pain.

The medical causation evidence in this case was provided by the claimant and Dr. Slaughter. The claimant's testimony alone is sufficient evidence of his physical condition.<sup>4</sup> And Dr. Slaughter confirmed claimant suffers from pseudoarthrosis-a failed fusion. Dr. Slaughter recommended anterior and posterior fusion of the spine at L4-S1, with instrumentation and removal of the discs at L4-5 and L5-S1. But the doctor also recommended claimant first take a Minnesota Multiphasic Personality Inventory (MMPI) to determine whether claimant would benefit even if surgery were successful.

The Board adopts the ALJ's analysis and conclusion claimant has a failed fusion and suffers from continued low back pain attributable to his original work-related injury. Consequently, the recommended surgery is necessary to relieve claimant's low back pain. Claimant has met his burden of proving that the treatment he is seeking is a natural consequence of the work-related injury. The ALJ's Award of additional medical treatment benefits is affirmed.

### **AWARD**

**WHEREFORE**, Administrative Law Judge Bruce E. Moore's Post Award Medical Award dated February 25, 2003, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of May 2003.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

---

<sup>4</sup> *Hanson v. Logan U.S.D.* 326, 28 Kan. App.2d 92, 11 P. 3d 1184, rev. denied 270 Kan. \_\_\_\_ (2001).

**DON A. LEE**

**4**

**DOCKET NOS. 241,965  
& 242,026**

c:     Joseph Seiwert, Attorney for Claimant  
       Richard L. Friedeman, Attorney for Respondent  
       Bruce E. Moore, Administrative Law Judge  
       Director, Division of Workers Compensation